

STATE OF MAINE
YORK, SS.

SUPERIOR COURT
CIVIL ACTION

DOCKET NO. CV-12-154

JON - YOR - 10/10/2012

MARY ELIZABETH ROULETT,)

Plaintiff,)

v.)

BRUCE ANDRE MARKELL,)

Defendant.)

ORDER OF DISMISSAL

BACKGROUND

Plaintiff and Defendant were married in 1987. Plaintiff and Defendant lived together in Cornish, Maine from 1988 until 2001. Defendant moved to Ohio in 2001 for a teaching position at Kent State University. In 2002, Plaintiff and Defendant purchased a home in Atwater, OH where Defendant lived year-round. Plaintiff visited Defendant in Ohio during the winter months. Defendant quitclaimed his interest in the Atwater, OH property to Plaintiff in 2006. Plaintiff considers Cornish, Maine her primary residence. Plaintiff has received her mail in Maine, has been registered to vote in Maine, and has had a Maine driver's license since 1988.

In August 2010, Plaintiff went to Atwater, Ohio to visit Defendant. While there, Defendant brutally beat Plaintiff. Plaintiff has brought this case to recover damages from the assault and battery, false imprisonment, intentional infliction of severe emotional distress, and punitive damages. Defendant moves to dismiss the case on the grounds that the Court lacks personal jurisdiction over the Defendant.

DISCUSSION

Defendant has moved to dismiss this case for lack of personal jurisdiction. In order for the Maine Superior Court to assert jurisdiction over a non-resident of Maine, the Maine

Long-Arm Statute must apply to the non-resident. 14 M.R.S. § 704-A (2011). The Maine Long-Arm Statute provides for jurisdiction to the fullest extent permissible under the Due Process Clause of the United States Constitution. *Estate of Hoch*, 2011 ME 24, P 22, 16 A.3d 137.

"Due process is satisfied when: (1) Maine has a legitimate interest in the subject matter of the litigation; (2) the defendant, by his or her conduct, reasonably could have anticipated litigation in Maine; and (3) the exercise of jurisdiction by Maine's courts comports with traditional notions of fair play and substantial justice." *Estate of Hoch*, 2011 ME 24, P 25, 16 A.3d 137.

For the first prong of the test the plaintiff must show that the state has an interest in the case. The state has an interest in providing residents with a forum to adjudicate disputes. 14 M.R.S. § 704-A(1) (2011); *Fore v. Benoit*, 34 A.3d 1125, 1128 (2012). The Law Court has held that the state's interest, "must be beyond mere citizenry . . . such as . . . the location of witnesses and creditors within its border." *Connelly v. Doucette*, 2006 ME 124, P 8, 909 A.2d 221; *Fore v. Benoit*, 34 A.3d 1125, 1128 (2012).

The second prong of the test analyzes the defendant's contacts .

The third prong of the test considers the reasonableness of requiring the defendant to litigate in Maine. See *Cavers v. Houston McLane Co., Inc.*, 2008 ME 164, PP 36-40, 958 A.2d 905; *Fore v. Benoit*, 34 A.3d 1125, 1129 (2012). "The court looks to the resources of the defendant to make this determination." *Fore v. Benoit*, 34 A.3d 1125, 1129 (2012).

The plaintiff bears the burden of proving the first two prongs of the test. Once the plaintiff has demonstrated prongs one and two of the test, the burden shifts the defendant to disprove the third prong of the test. *Fore v. Benoit*, 34 A.3d 1125, 1129 (2012). "When the court proceeds only upon the pleadings and affidavits of the parties, the plaintiff need only make a prima facie showing that jurisdiction exists, and the plaintiff's written

allegations of jurisdictional facts should be construed in its favor." *Dorf v. Complastik Corp.*, 1999 ME 133, P 14, 735 A.2d 984 (quotation marks omitted).

In the current case, the first prong of the test is satisfied because of the interest in providing the Plaintiff a forum to litigate her dispute due to her Maine residence.

On the second prong, a Defendant has sufficient contacts with Maine for the court to assert jurisdiction "when the defendant purposefully directs his or her activities at Maine residents or creates continuing obligations between herself and Maine residents. *Estate of Hoch*, 2011 ME 24, P 27, 16 A.3d 137. In *Bickford v. Oslow Mem'l Hosp. Found., Inc.*, the Law Court determined that the defendant also had sufficient contacts with Maine where defendant's actions affected a Maine resident who was in Maine at the time the action caused injury. *Bickford v. Oslow Mem'l Hosp. Found., Inc.*, 2004 ME 111, PP 12-13, 855 A.2d 1150; *Fore v. Benoit*, 34 A.3d 1125, 1129 (2012).

Neither *Bickford* or *Fore* dealt with a situation involving a tort causing personal injury. In *Murphy v. Keenan* 667 A.2d 591 (Me. 1995) the Law Court addressed the application of this test to tort actions and concluded that the commission of an act outside the forum state which had consequences in the forum state was by itself an insufficient contact where all the events necessary to give rise to a tort claim occurred outside the forum state. *Id. at 595*

Each of the elements establishing this cause of action occurred outside the State of Maine. Apart from the fact that consequences of that tortious conduct continue to be endured in Maine, there appear to be no other contacts with Maine that would allow exercise of jurisdiction. Under the analysis in *Murphy*, ongoing consequences being suffered in Maine when the tort claim arose outside Maine are not enough to allow the exercise of jurisdiction by themselves.

The second prong of the test, concerning Defendant's contacts with Maine, is not satisfied. The incident that gave rise to the current litigation did not occur in Maine and therefore fails the test set out in *Murphy* and in *Bickford v. Oslow Mem'l Hosp. Found., Inc.* Defendant was at one time a Maine resident, and he was aware that Plaintiff was a Maine resident at the time of the incident. However, neither Defendant's past residence nor his knowledge of Plaintiff's residence is sufficient for personal jurisdiction. Defendant must have had sufficient contact with Maine to have reasonable notice of the potential for litigation in Maine. Defendant did not have such contact in this case.

Because of this conclusion on the second prong, the court does not address the third.

CONCLUSION

The Court grants Defendant's Motion to Dismiss for lack of personal jurisdiction.

Defendant's Motion for an Evidentiary hearing is denied as moot.

Clerk may incorporate by reference upon the docket

DATED: 10/10/12



Justice John O'Neil, Jr.

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